

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7508

Petition of Georgia Mountain Community Wind, LLC, )  
for a Certificate of Public Good, pursuant to 30 V.S.A. )  
Section 248, authorizing the construction and operation )  
of a 5-wind turbine electric generation facility, with )  
associated electric and interconnection facilities, on )  
Georgia Mountain in the Towns of Milton and Georgia, )  
Vermont, to be known as the "Georgia Mountain )  
Community Wind Project" )

Order entered: 7/2/2009

**ORDER RE: MOTIONS TO INTERVENE**

**BACKGROUND**

In this Order, the Vermont Public Service Board ("Board") addresses motions to intervene that were filed by the following persons and entities:

Bob and Tammy Avonda;

Citizens for Preservation of Georgia Mountain ("CPGM");

City of Burlington Electric Department ("BED");

Daniel and Tina FitzGerald;

Kenneth and Virginia Mongeon;

Kevin and Cindy Cook;

George A. and Kenneth N. Wimble;

Jane FitzGerald;

Scott and Melodie McLane;

Matthew and Kimberly Parisi; and

Northwest Regional Planning Commission ("NRPC").

Responses to the motions were filed by Georgia Mountain Community Wind, LLC ("GMCW") and the Vermont Department of Public Service ("Department"). We address each of the motions to intervene below.

On June 25, 2009, the Town of Milton ("Milton") filed a motion to intervene in this proceeding. Responses are due on July 9, 2009. Milton's intervention request will be addressed in a subsequent order.

We note that several of the moving parties are representing themselves. These *pro se* parties are reminded that, even though we make accommodations to enable participation by non-attorneys, they are still required to adhere to all of the Board's Rules of Practice for appearing before the Board.<sup>1</sup> This includes the requirement that all filings be served on all other parties to the proceeding.

This proceeding has a large number of parties and prospective parties, which can present challenges to an efficient process. GMCW requests that the Board order all landowners admitted as parties to join together. We decline to consolidate parties at this time. However, we encourage parties with similar interests to work together in the preparation of testimony and discovery, as well as the examination of witnesses. To reduce duplicative testimony and examination, the Board also has the authority under Board Rule 2.209(C) to require parties to join with other parties "with respect to appearance by counsel, presentation of evidence or other matters." We do not impose any such requirements at this time, but may in the future if the "interests of justice and economy of adjudication require."<sup>2</sup>

**Bob and Tammy Avonda**

In their motion to intervene filed on June 12, 2009, the Avondas state that they are concerned about the impact of the proposed project on the view from their property and their enjoyment of the natural environment on Georgia Mountain. The Avondas also expressed concern regarding the impact of the proposed project on the value of their property.

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1. The Board's Rules are available on-line at [www.state.vt.us/psb/rules/rules.stm](http://www.state.vt.us/psb/rules/rules.stm). Additionally, GMCW contends that several of the intervention requests by *pro se* parties appear to have been "ghost written" by an attorney and requests that the Board require *pro se* parties to "affirm that legal counsel has not and will not be assisting in the preparation of materials filed in this proceeding." At this time, we do not impose such a requirement. The Board generally allows some limited flexibility for *pro se* parties with respect to procedural matters; however, *pro se* parties in this proceeding that make filings prepared by attorneys may not be provided with such leeway.

2. Board Rule 2.209(C).

GMCW maintains that the Avondas have failed to satisfy the criteria for permissive intervention under Board Rule 2.209(B). GMCW states that the Avondas' motion to intervene is deficient because it fails to demonstrate any particularized interest with regard to the criteria on which they seek intervention.

The Department states that the Avondas' intervention request makes an insufficient showing for a determination to be made as to whether they should be granted intervention.

We deny the Avondas' request to intervene because the request lacks sufficient information upon which to grant intervention. The *Citizens' Guide to the Public Service Board's Section 248 Process* that was distributed at the prehearing conference and at the public hearing in this Docket, and is available on the Board's website, specifically addresses the standards used by the Board to evaluate intervention requests. The Avondas may refile their motion to intervene; if they choose to do so, they must fully address each of the following requirements:

- (1) the location of their property in relation to the proposed project;<sup>3</sup>
- (2) a description of the specific and particularized interest that they seek to assert in this proceeding, with a demonstration that their interest may be affected by the outcome of this proceeding;
- (3) an explanation of whether their specific and particularized interest will be adequately protected by other parties; and
- (4) a demonstration that their participation will be related to the issues subject to review under 30 V.S.A. § 248.

In their motion, the Avondas state that they have spent considerable time on Georgia Mountain. If they choose to refile, the Avondas should also provide a more detailed description of their activities on Georgia Mountain, and how those activities would be impacted by the proposed project.

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3. The tax map that accompanies the Avondas' motion to intervene does not provide sufficient information regarding the location of their property in relation to the proposed project. The Avondas should explain the location of their property relative to the proposed wind turbine sites, including the approximate distance of their residence and property from the proposed turbine sites.

If they choose to refile their motion, the Avondas shall do so within ten days of this Order. Any party who wishes to respond must do so within one week after the request is filed by the Avondas.

**Citizens for Preservation of Georgia Mountain**

CPGM filed a motion to intervene in this proceeding on June 15, 2009. CPGM states that it is "a citizens' group comprised of residents, property owners, businesspeople, voters, and taxpayers in communities encompassing parts of, or in the vicinity of, the proposed wind electric generation facility and associated transmission and interconnection facilities . . . ." CPGM also states that its members include "abutters and neighbors . . . along North Road, Georgia Mountain Road, Ted Road, and associated roads." CPGM maintains that it has a substantial interest in issues related to GMCW's investment in and construction of the wind generation facility and associated transmission and interconnection facilities. CPGM identifies issues of concern related to 30 V.S.A. §§ 248 (b)(1) (orderly development), (b)(2) (need), (b)(4) (economic benefit), and (b)(5) (aesthetics and environment).

GMCW objects to the intervention of CPGM. GMCW contends that the motion does not provide sufficient information on the specific and particularized property interests of its members. GMCW also argues that the motion contains vague references that are insufficient to identify the properties in relation to the proposed project.

The Department does not object to CPGM being granted party status on a permissive basis.

We deny CPGM's intervention request because the motion does not adequately describe either the purposes or the interests of the organization. Without such information, it is not possible to assess whether and how the proposed project will affect the interests of CPGM's members. CPGM may refile its motion to intervene, within 10 days of this Order, and provide additional information describing the purposes and interests of the organization. This should include by-laws or other documentation showing the group's purpose, if applicable. CPGM shall also indicate the approximate number of members and whether any of these members are also separately admitted as parties in this proceeding.

CPGM's motion was submitted by Darlene Ross, its *pro se* representative. GMCW contends that in order to intervene with Ms. Ross as its *pro se* representative, CPGM should be required to demonstrate that (1) the organization cannot afford to hire counsel, nor can it secure counsel on a pro bono basis, (2) the proposed lay representative is authorized to represent the organization, (3) the proposed lay representative demonstrates adequate legal knowledge and skills to represent the organization without unduly burdening the opposing party or the court, and (4) the representative shares a common interest with the organization. We decline to impose these requirements which have been applied in court proceedings in Vermont. The Board has its own rules, including one governing *pro se* representation (Rule 2.201(B)). Pursuant to the Board's Rule, Ms. Ross may represent CPGM if (1) CPGM renews its request, (2) CPGM is granted intervention, and (3) Ms. Ross meets the requirements of the Board's Rule regarding *pro se* representation.<sup>4</sup>

#### **City of Burlington Electric Department**

BED filed a motion to intervene in this proceeding on June 8, 2009. BED states that it has been in discussions with GMCW relating to the purchase of power from the proposed project or the rights to develop and operate the project. In its motion, BED asks that it be allowed to intervene as of right, pursuant to Board Rule 2.209(A), and, in the alternative, asks that it be granted permissive intervention pursuant to Board Rule 2.209(B).

GMCW does not object to BED being granted party status on a permissive basis under Rule 2.209(B) relating to the issues it identifies in its motion to intervene.

The Department does not object to BED being granted party status on a permissive basis.

We grant BED permissive intervention, pursuant to Board Rule 2.209(B). BED's intervention is limited to the interests that it identifies in its motion.

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4. If CPGM is a partnership, corporation, cooperative or association, it must adhere to Board Rule 2.201(B) with respect to its representation, namely, "a partnership may be represented by a partner, and a corporation, cooperative or association may be represented by an officer thereof or by an employee designated in writing by an officer thereof."

**Adjoining Landowners****Daniel and Tina FitzGerald**

In their motion to intervene filed on June 15, 2009, the FitzGeralds state that their residence is approximately 3,000 feet from the proposed project site. They state that the proposed project will cause financial harm to their property and damage to the environment. They are concerned that noise, flickering, and vibrations will have an adverse effect on their children's home-school learning environment. The FitzGeralds state that they have substantial concerns and interests related to 30 V.S.A. §§ 248 (b)(1) (orderly development), (2) (need), (4) (economic benefit), and (5) (aesthetics and environment).

**Kenneth and Virginia Mongeon**

In their motion to intervene filed on June 15, 2009, the Mongeons expressed concern that the proposed project will increase vehicle traffic on their road, which they maintain because it is not a "Town approved road." They are concerned about health effects related to, and the environmental impact of, the proposed project. The Mongeons state that they have substantial concerns and interests related to 30 V.S.A. §§ 248 (b)(1) (orderly development), (2) (need), (4) (economic benefit), and (5) (aesthetics and environment).

**Kevin and Cindy Cook**

In their motion to intervene filed on June 15, 2009, the Cooks expressed concern about the "flicker effect" from the proposed project. The Cooks have been "shared living providers for the mentally handicapped," and are concerned that the flicker from the proposed project may trigger seizures in the individuals whom the Cooks host in their home. The Cooks state that they have substantial concerns and interests related to 30 V.S.A. §§ 248 (b)(1) (orderly development), (2) (need), (4) (economic benefit), and (5) (aesthetics and environment).

**George A. and Kenneth N. Wimble**

In their motion to intervene filed on June 16, 2009, the Wimbles state that they are concerned about the effects of the proposed project on wildlife, natural water resources, and

property values. The Wimbles also allege that the proposed project will negatively affect the health of their dairy herd because of "the potential for stray voltage." They are also concerned about the effects of low-frequency sound waves and shadow flicker on the overall health, production, and reproduction of their dairy herd. The Wimbles state that they have substantial concerns and interests related to 30 V.S.A. §§ 248 (b)(1) (orderly development), (2) (need), (4) (economic benefit), and (5) (aesthetics and environment).

#### Jane FitzGerald

In her motion to intervene filed on June 16, 2009, Jane FitzGerald states she owns 240 acres on Georgia Mountain and that three of the proposed turbine sites are set 150 feet from her property line. She is concerned that the proposed project configuration will jeopardize the use and enjoyment of her land. She is specifically concerned about physical safety issues related to the close proximity of the proposed turbine sites. Jane FitzGerald also raises specific concerns related to the impact of the proposed project on the resources that her land provides for wildlife. She also states that she allows others to use her land for viewing wildlife and for other outdoor recreation activities. Jane FitzGerald alleges that the proposed project will produce a negligible amount of electricity relative to the State's electricity needs. Jane FitzGerald states that she has substantial concerns and interests related to 30 V.S.A. §§ 248 (b)(1) (orderly development), (2) (need), (4) (economic benefit), and (5) (aesthetics and environment).

#### Responses

GMCW does not oppose the adjoining landowners intervention or participation on criteria (b)(1) (orderly development) and (5) (aesthetics and environment). However, GMCW states that the adjoining landowners have not demonstrated a particularized interest relating to the other criteria.

The Department does not object to any of the adjoining property owners being granted party status on a permissive basis.

### Discussion

While this proceeding will not address the impact of the proposed project on individual property values,<sup>5</sup> one factor relevant to determining whether the proposed project will provide an economic benefit to the state is the overall impact of the proposed project on property values in general. Thus, we will allow the adjoining landowners to address economic benefit issues. However, we further conclude that the adjoiners have not demonstrated any particularized interest with respect to the need for the proposed project (criteria (b)(2)).

We grant the FitzGeralds' motion on a permissive basis, limited to the interests that they have identified in their motion, with the exception of the need for the proposed project (criteria (b)(2)).

We grant the Mongeons' motion on a permissive basis, limited to the interests that they have identified in their motion, with the exception of the need for the proposed project (criteria (b)(2)).

We grant the Cooks' motion on a permissive basis, limited to the interests that they have identified in their motion, with the exception of the need for the proposed project (criteria (b)(2)).

We grant the Wimbles' motion on a permissive basis, limited to the interests that they have identified in their motion, with the exception of the need for the proposed project (criteria (b)(2)).

We grant Jane FitzGerald's motion on a permissive basis, limited to the interests that she has identified in her motion, with the exception of the need for the proposed project (criteria (b)(2)).

### **Non-adjoining Landowners**

#### Scott and Melodie McLane

In their motion to intervene filed on June 15, 2009, the McLanes state that the turbine sites are approximately 6/10ths of a mile from their property line and 7/10ths of a mile from their

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5. As the Vermont Supreme Court stated in *Vt. Elec. Power Co. v. Bandel*, "Proceedings under 30 V.S.A. § 248 relate only to the issues of public good, not to the interests of private landowners who are or may be involved." (135 Vt. 141,145 (1977)).



residence. The McLanes are concerned about noise and flickering associated with the proposed project. They state that the proposed project will have a negative effect on the value of their property. The McLanes state that they have substantial concerns and interests related to 30 V.S.A. §§ 248 (b)(1) (orderly development), (2) (need), (4) (economic benefit), and (5) (aesthetics and environment).

#### Matthew and Kimberly Parisi

In their motion to intervene filed on June 16, 2009, the Parisis state that the proposed turbine sites are less than one mile from their home and the turbines would be visible from their home. The Parisis are concerned that the flickering and noise associated with the proposed project will cause ill health effects, including serious learning disabilities, for their children (whom they homeschool). The Parisis also allege that the proposed project could increase the likelihood of car accidents on nearby roads and diminish the value of their property. The Parisis state that they have substantial concerns and interests related to 30 V.S.A. §§ 248 (b)(1) (orderly development), (2) (need), (4) (economic benefit), and (5) (aesthetics and environment).

#### Responses

GMCW maintains that the non-adjoining landowners have failed to satisfy the criteria for permissive intervention under Board Rule 2.209(B). GMCW states that the non-adjoining landowners' motions to intervene are deficient because they fail to demonstrate any particularized interest with regard to the criteria on which they seek intervention and contends that non-adjoining landowners do not have the requisite interests to intervene individually.

The Department does not object to the non-adjoining landowners being granted party status on a permissive basis.

#### Discussion

The question of whether an individual landowner has the right to intervene in a Section 248 proceeding is not limited to whether that landowner abuts the site of the proposed project. Instead the relevant question is whether the proposed project could impact the landowners. The

scale of the proposed project is such that it has the potential to impact landowners that are not located adjacent to the proposed project site. The McLanes and the Parisis have both demonstrated that the proposed project has the potential to impact their interests.

As stated above, while this proceeding will not address the impact of the proposed project on individual property values, one factor relevant to determining whether the proposed project will provide an economic benefit to the state is the overall impact of the proposed project on property values in general. Thus, we will allow the McLanes and the Parisis to address economic benefit issues. However, we further conclude that the McLanes and the Parisis have not demonstrated any particularized interest with respect to the need for the proposed project (criteria(b)(2)), nor have the Parisis demonstrated any particularized interest with respect to traffic safety.

We grant the McLanes' motion on a permissive basis, limited to the interests that they have identified in their motion, with the exception of the need for the proposed project (criteria (b)(2)).

We grant the Parisis' motion on a permissive basis, limited to the interests that they have identified in their motion, with the exception of the need for the proposed project (criteria (b)(2)) and the increased likelihood of car accidents on nearby roads.

#### **Northwest Regional Planning Commission**

NRPC filed a motion to intervene in this proceeding on June 16, 2009. NRPC states that it consists of the municipalities of Franklin and Grand Isle Counties, including the Town of Georgia. NRPC states that it has substantial concerns and interests related to 30 V.S.A. §§ 248 (b)(1) (orderly development) and (5) (aesthetics and environment).

GMCW does not object to NRPC being granted party status on a permissive basis relating to the criteria that it identifies in its motion to intervene.

The Department does not object to NRPC being granted party status on a permissive basis.

We grant NRPC permissive intervention, limited to the interests that it identifies in its motion.

**ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The motion to intervene filed by Bob and Tammy Avondas is denied. If the Avondas choose to refile their motion, they shall do so within ten days of this Order.
2. The motion to intervene filed by Citizens for Preservation of Georgia Mountain is denied. If Citizens for Preservation of Georgia Mountain chooses to refile its motion, it shall do so within ten days of this Order.
3. The City of Burlington Electric Department is granted permissive intervention, limited to the interests that it identifies in its motion.
4. Daniel and Tina FitzGerald are granted permissive intervention, limited to the interests that they identify in their motion, with the exception of the need for the proposed project (criteria (b)(2)).
5. Kenneth and Virginia Mongeon are granted permissive intervention, limited to the interests that they identify in their motion, with the exception of the need for the proposed project (criteria (b)(2)).
6. Kevin and Cindy Cook are granted permissive intervention, limited to the interests that they identify in their motion, with the exception of the need for the proposed project (criteria (b)(2)).
7. George A. and Kenneth N. Wimble are granted permissive intervention, limited to the interests that they identify in their motion, with the exception of the need for the proposed project (criteria (b)(2)).
8. Jane FitzGerald is granted permissive intervention, limited to the interests that she identifies in her motion, with the exception of the need for the proposed project (criteria (b)(2)).
9. Scott and Melodie McLane are granted permissive intervention, limited to the interests that they identify in their motion, with the exception of the need for the proposed project (criteria (b)(2)).

10. Matthew and Kimberly Parisi are granted permissive intervention, limited to the interests that they identify in their motion, with the exception of the need for the proposed project (criteria (b)(2)) and the increased likelihood of car accidents on nearby roads.
11. The Northwest Regional Planning Commission is granted permissive intervention, limited to the interests that it identifies in its motion.

Dated at Montpelier, Vermont, this 2<sup>nd</sup> day of July, 2009.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
	)	

OFFICE OF THE CLERK

FILED: July 2, 2009

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*